IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3816 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GAC SHIPPING (INDIA) PVT LTD

Versus

ASST. PROVINDENT FUND COMM.

Appearance:

1. Special Civil Application No. 3816 of 2004

PS GOGIA for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 05/07/2004

ORAL JUDGEMENT

Rule. Mr.P.J.Mehta appears for the respondents and waives service of notice of rule. At the request of the learned advocates for the parties, the matter is taken up for final disposal forthwith.

2. In the present petition, the petitioner has challenged the notice dated 11.3.2004 as at Annexure A. Learned advocate for the petitioner submits that though notice dated 11.3.2004 is titled as "show cause notice" it is clear from the contents of the said notice that the respondent No.1 has already decided the issues regarding the requirement of the petitioner to comply with the provisions of the Employees Provident Fund and Miscellaneous Provisions Act (for short "the said Act") and that therefore the present petition is required to be entertained. It is his contention that there is no dispute about the fact that the provisions of the said Act are applicable to the workers of the petitioner unit, however, he submits that deductions towards provident fund are being made and deposited in Kerala and that therefore there is no need to comply with the same all over again in Gandhidham region as contended by the respondent. In fact, he brings to my notice the inspection report at Annexure 'C' wherein the officer of the respondent has also found that all provident fund contribution is being deducted and deposited in the Regional Provident Fund Commissioner, Cochin. He, therefore, contends that the respondents have no authority to insist for fresh code number to be taken in Gujarat region and the procedure be followed all over again. In response to this, Mr.P.J.Mehta, appearing for the respondents submits that though it may be true that the provident fund deductions are being made by the petitioner from the employees' wages and are being deposited with the Provident Fund Commissioner, Kerala, the same does not permit the petitioner not to follow the requirements in Gujarat region and deposit the provident fund dues of the workers with Gujarat Region Office.

3. Learned advocate for the petitioner submits that he has already made a detailed representation in response to the notice dated 11.3.2004 and that he has also produced sufficient material to establish his case.

4. I am of the view that the present petition can be disposed of by directing the respondent No.1 to first decide the question whether the petitioner is required to comply with the provisions of the said Act in the Gujarat region when he has already making deductions towards provident fund from the salary of the employees and depositing the same with the Provident Fund Commissioner,

Kerala. I therefore, direct the respondent No.1 to decide the said question first before taking any further steps pursuant to the show cause notice dated 11.3.2004. The representation and the earlier replies filed by the petitioner in this regard shall be taken into account and if the decision is adverse to the petitioner, a speaking order shall be passed in this regard. If the petitioner prays for personal hearing, the respondent No.1 shall consider the same in accordance with law keeping in mind the issues arising in the present case. Needless to say that if the decision that may be arrived at by the respondent No.1 is adverse to the petitioner, he shall have such legal recourse against the same as may be available under the law.

4. Subject to the above directions, the petition stands disposed of. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)